

Glenn D. Smith  
 One M&T Plaza, Suite 2000  
 Buffalo, NY 14203-2391  
 Telephone: 716.856.4000  
 Facsimile: 716.849.0349

*#6*  
**Hodgson Russ**  
 ATTORNEYS • LLP

*#6*

A Registered Limited Liability Partnership Including Professional Associations

Please deliver the following pages to:

Name: Examiner Teri Luu  
 Phone Number: 703.605.4328  
 Company: U.S. Patent and Trademark Office - GAU 3651  
 Facsimile: 703.605.0586  
 From: Glenn D. Smith Direct Telephone: 716.848.1642  
 Total Pages: 7 (including cover page)  
 Today's Date: June 25, 2003  
 Comments: Re: Applicant : Dieter GULDENFELS, et al.  
 Serial No. : 09/909,447  
 Filing Date : July 19, 2001  
 Title : Snap-on Side Guards  
 Atty. Docket : 31529.0011

*RECEIVED*  
*JUN 25 2003*  
*GROUP 3800*

Examiner Luu:

Attached please find a Petition to Withdraw Holding of Abandonment (2 pages), copy of Reply to Restriction Requirement dated September 25, 2002 (3 pages), and a Statement of Barbara Haggerty. Please contact Glenn D. Smith at (716) 848-1642 if there are any questions.

**FACSIMILE TRANSMISSION CERTIFICATE**

I hereby certify that this paper is being transmitted to the U.S. Patent and Trademark Office to (703) 605-0586 on the date shown below.

Rachel Watt

Name of person signing the certification

*Rachel Watt*

Signature

June 25, 2003

Date

**Confidentiality Notice**  
 This is a **CONFIDENTIAL** transmission. The sender, Hodgson Russ, is a law firm representing its client. The transmission is intended for the designated addressee only. If you are not the intended recipient, please contact us immediately and **REFRAIN FROM DISCLOSING OR USING THE ENCLOSED INFORMATION IN ANY WAY**. Failure to comply with this direction may result in a claim that you have violated the law and/or are liable for money damages.

Thank you for your attention to this message. If you have received this transmission in error, please notify us by telephone 716.848.1606 immediately so that we can arrange for the return of the documents to us at no cost to you.

In the event of missing pages or other problems with the transmission of the Facsimile, please call: 716.848.1606

File No: 31529.0011

Date: 6-25-03

Attorney/Attorney No.: GDS/767

Time Sent: 9:12 AM PM

Total No. of Pages Telecopied (including cover page): 7

Floor/Ext: 17/1606

Operator's Name: JK

Albany • Boca Raton • Buffalo • Gloversville • JFK International Airport  
 New York City • Newark • Palm Beach Gardens • Toronto • [www.hodgsonruss.com](http://www.hodgsonruss.com)

Attorney Docket No. : 31529.0011**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Group Art Unit :3651  
Examiner : Rashmi K. Sharma

Application of	:	Dieter GULDENFELS et al.
Serial No.	:	09/909,447
Filing Date	:	July 19, 2001
Title	:	SNAP-ON SIDE GUARDS

**PETITION TO THE COMMISSIONER UNDER 37 C.F.R. §1.181(A)  
TO WITHDRAW HOLDING OF ABANDONMENT**

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**Attn: Teri Luu, Special Programs  
Examining Unit**

Sir:

This is a Petition to Withdraw the Holding of Abandonment of the above-identified patent application. The facts of such abandonment are as follows. A telephone call from Examiner Luu, received by this office on June 18, 2003, informed us the above-identified patent application went abandoned for "failure to reply to the restriction requirement." However, the Applicants did reply to the restriction requirement. Enclosed please find the following, showing submission of the Reply to the Restriction Requirement:

RECEIVED  
JUN 25 2003  
GROUP 3800

- 1) Copy of the Reply to the Restriction Requirement dated September 25, 2002; and
- 2) Statement of Barbara Haggerty attesting to the timely mailing of the response based on personal knowledge.

Serial No.: 09/909,447

Attorney Docket No.: 31529.0011

Accordingly, it is respectfully requested that the holding of abandonment of the above-identified patent application be withdrawn. Acknowledgement of the active status of this application is respectfully requested.

It is believed no fee is due with this Petition. If, however, a fee is due, the Commissioner is hereby authorized to deduct the fee from Deposit Account No. 08-2442 of the undersigned.

Respectfully submitted,  
HODGSON RUSS LLP  
Attorneys for Applicants

By:



Glenn D. Smith  
Reg. No. 42,156

Date: June 25, 2003

HODGSON RUSS LLP  
One M&T Plaza, Suite 2000  
Buffalo, New York 14203-2391  
(716) 856-4000

Enclosures: Reply to Restriction Requirement dated September 25, 2002  
Statement of Barbara Haggerty

BFLODOCS: 827346 v1 (HQD%6011.DOC)

Attorney Docket No.: 31529.0011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Group Art Unit : 3651

Examiner : Rashmi K. Sharmat

Applicant :	Dieter Guldenfels et al.
Serial No. :	09/909,447
Filing Date :	July 19, 2001
Title :	SNAP-ON SIDE GUARDS

**STATEMENT ATTESTING TO MAILING OF PTO CORRESPONDENCE  
UNDER 37 CFR 1.8(a)**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, V.A. 22313-1450

Sir:

I state that on September 25, 2002, I mailed the original of the attached copy of correspondence and Certificate of mailing by first class mail, with sufficient postage, in an envelope addressed to the "Assistant Commissioner for Patents, Washington, DC 20231."

Barbara Haggerty  
Name of person making this statement

Date: June 25, 2003

Barbara Haggerty  
Signature

I hereby Certify that this Correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on September 25, 2002

Barbara Haggerty

Name

Barbara Haggerty

Signature

September 25, 2002

Date of Signature

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Guldenfels et al.

Serial No.: 09/909,447

Filed: July 19, 2001

For: Snap-On Side Guards

Examiner: Unknown

Group Art Unit: 3651

Commissioner for Patents  
Washington, DC 20231

copy 6  
#5

REPLY TO RESTRICTION REQUIREMENT

Sir:

An Office Action dated September 3, 2002 has been received in connection with the above-identified patent application. The examiner has restricted this application under 35 U.S.C. 121 to three groups of claims:

- I Claims 1 - 7, drawn to a side guard;
- II. Claims 8 - 16, drawn to a modular belt system; and
- III. Claims 17 - 20, drawn to a method of forming a snap-on-guard.

31529.0011

Applicants respectfully request removal of this restriction requirement for failure to establish a *prima facie* case.

Restriction of the invention in an application may be appropriate if a patent application claims two or more "independent and distinct" inventions (35 U.S.C. §121). According to the MPEP, the term "independent" is interpreted to mean that "there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation, or effect" (MPEP §802.01, emphasis added). The instant application is directed toward a side guard for use with a belt module (claims 1-7), a modular belt system having the same side guard (claims 8-16) and a method of forming a snap-on side guard for a radius belt by assembling the belt modules and side guard of the above modular belt system (claims 17-20). The relationship of the claims is set forth in part in the summary of the invention: "[a] plurality of snap-on side guards are mounted in vertical openings disposed in the belt modules" (Specification, p. 3, lines 8-9). Therefore, the claims are at least related as a snap-on side guard for belt modules, belt modules having snap-on side guards, and method for forming a radius belt having snap-on side guards. Because of this "disclosed relationship of the two or more subjects disclosed", the independent prong of the "independent and distinct" requirement under 35 U.S.C. §121 for restriction of claims is not met. Therefore, the office action fails to establish a *prima facie* case for restriction of this application. Accordingly, the restriction requirement should be withdrawn.

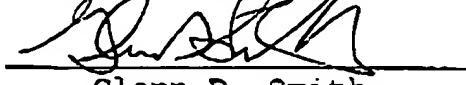
31529.0011

The office action indicates that the Invention of Group III is classified in class 198, subclass 617. Applicants believe this classification to be in error.

The Classification Definitions (December 2000 Edition) sets forth that subclass 617 of class 198 is "indented under the class definition. Method, , of conveying a load or load portion from one place to another" (Classification Definitions, p. 198-63). Because claims 17-20 are directed toward a "method of forming a snap-on side guard for a radius belt", it is improper for claims 17-20 to be placed in class 198, subclass 617.

For at least the reasons given above, Applicants respectfully traverse this restriction requirement. Notwithstanding the Applicants traverse of the restriction requirement, for the purpose of providing a complete reply to the restriction requirement, applicants elect for prosecution the claims of Groups II and III. Should the patent office not agree with applicants suggested reclassification of the claims of Group III, applicants elect the claims of Group II for prosecution.

Respectfully submitted,



\_\_\_\_\_  
Glenn D. Smith  
Reg. No. 42,156

Hodgson Russ LLP  
One M & T Plaza - Suite 2000  
Buffalo, New York 14203  
(716) 856-4000  
September 25, 2002